



DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

DATE: May 6th, 2019

TO: Honorable Jennifer Williamson, Chair of the House Committee on Judiciary

FROM: Aaron Knott, Legislative Director

SUBJECT: SB 321 – Enhanced Access to DNA Testing

This testimony is presented in support of SB 321.

Background:

The purpose of SB 321, as amended, is to expand access to DNA testing for persons who have been convicted of felony offenses, but who have a good faith claim that DNA testing will establish that they should not have been found guilty of the crimes that they were convicted of. Although SB 321 expands access to DNA testing, it also establishes appropriate thresholds that individuals must meet to qualify for testing. We believe that SB 321 strikes the appropriate balance between increasing access for DNA testing for those who it will truly make a difference for and preserving the finality of those convictions where additional testing will not exonerate a convicted person. The Attorney General thanks the Oregon Innocence Project for their partnership, leadership and effort on this important bill concept which will move Oregon forward in preventing the incarceration of the demonstrably innocent.

The following is a summary of the significant changes to Oregon’s Post-Conviction DNA statutes that will be made by SB 321.

Section 2 - Definitions:

SB 321 adds a new definitions section to the PCR DNA statutes. Most of these new definitions relate to the sections of the bill that change the protocols for adding testing data to state and national crime databases. There is also a new definition of “exculpatory results” and “exculpatory evidence,” which are terms used throughout the PCR DNA statutes. This definition clarifies that evidence is exculpatory if the evidence is material to a determination of the identity of the individual who committed the crime or, in appropriate cases, whether the crime was committed.

Section 3 – Process for Filing Petition

This section sets out the process by which a person may initiate a DNA testing proceeding and what the state’s obligations are once such a petition has been filed.

Section 4 – Process for Filing and Responding to Motion for DNA Testing / Standards for Ruling on Motion

Section 4 establishes the requirements for a petitioner to file a motion for DNA testing; it sets forth when and how the state responds to such a motion; and it provides the standards for the court to apply in ruling on a motion for DNA testing.

A. Motion

SB 321 amends ORS 138.692 to establish that a petitioner requests DNA testing by filing a motion. The motion must be accompanied by a declaration that the person is innocent of the offense for which the person was convicted and a statement that: (A) Identifies what evidence is to be tested; (B) Includes the results of previous DNA tests; (C) The identity of the perpetrator of the crime was at issue in the underlying prosecution OR a statement that no crime occurred; and (D) Explains that, in light of all of the evidence, how the requested testing would establish a reasonable probability that the petitioner would not have been prosecutor or convicted OR that there would have been a more favorable outcome to the underlying prosecution. The petitioner must also serve a copy of any prior sworn testimony of the petitioner on the prosecutor concurrently with the filing of the motion.

The amendments to ORS 138.692 (new paragraph (4)) make clear that a person who pleaded guilty or no contest or made a confession or similar admission is not procedurally barred from filing a motion for DNA testing.

B. Response

The state shall answer the motion for performance of DNA testing, but only after the petitioner has served the prosecutor with a copy of any prior sworn testimony.

C. Court Ruling

SB 321 sets up a two-tiered approach for courts ruling on a DNA motion. Under the new paragraph (5) to ORS 138.692, a court is *required* to order testing if it finds: (a) the evidence to be tested has been subject to a sufficient chain of custody; (b) the motion is not made for purposes of delay; (c) in light of all the evidence there is a reasonable probability that the person would not have been prosecuted or convicted had exculpatory DNA test results been available at the time of the underlying prosecution; and (d) EITHER the identity of the perpetrator of the crime was at issue in the original proceeding OR if the petitioner alleges that no crime occurred, that the requested testing could not have been obtained during the criminal proceedings with the exercise of due diligence

Under the new paragraph (6), a court *may* order DNA testing if it finds (a), (b), and (d) from the previous paragraph and if it finds that in light of all the evidence, had exculpatory results been available at the time of the underlying prosecution, there would have been a more favorable outcome.

The reason for the two-tiered (shall vs. may) approach is because under the “shall” section, the court must make a finding that is more akin to a conclusion that the exculpatory evidence would mean that the person is actually innocent. If it makes that finding, it must order the testing. However, under the “may” section, the court has discretion to order (or not) the testing if it can only make the finding that the outcome of the underlying proceeding would have

been more favorable. In that case, a court should have more flexibility to decide whether or not ordering the testing will serve any utility in the context of the individual case.

Section 5 – New Trial

This section clarifies that when DNA testing ordered under the previous section produces exculpatory evidence/results, the petitioner may file a motion for a new trial and that motion should be evaluated using the new trial standards from ORCP 64.

Section 6-7 – DNA Database

These sections clarify what happens to DNA test results that are the product of a motion under this law and when and how those results are uploaded to various federal and state databases.

Contact: Aaron Knott, Legislative Director, aaron.d.knott@doj.state.or.us or (503) 798-0987